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**BRODY, BENARD & BRANCH, LLP**  
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***LEONARD BERNSTEIN and***  
***JANE HOLMES BERNSTEIN***  
205 Lexington Avenue, 4<sup>th</sup> Floor  
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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X **Docket No: 07 CIV 9824**  
**NICHOLAS SANDS, and SANDS & COMPANY, INC.,**

**Plaintiff,**

**ANSWER**

**-against-**

**LEONARD BERNSTEIN and JANE HOLMES BERNSTEIN,**

**Defendant.**

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**COMPLAINT**

Defendant, **LEONARD BERNSTEIN and JANE HOLMES BERNSTEIN** by their  
attorneys, **BRODY, BENARD & BRANCH, LLP**, as and for a Answer to the plaintiffs'  
Complaint, sets forth as follows:

**NATURE OF THE ACTION**

**FIRST:** Defendants **LEONARD BERNSTEIN and JANE HOLMES**  
**BERNSTEIN** deny each and every allegation contained in Paragraph "1" of the plaintiffs'  
Complaint.

**THE PARTIES**

SECOND: Defendants **LEONARD BERNSTEIN and JANE HOLMES**

**BERNSTEIN** admit each and every allegation contained in Paragraphs “2”, “3” and “4” of the plaintiffs’ Complaint.

**JURISDICTION AND VENUE**

THIRD: Defendants **LEONARD BERNSTEIN and JANE HOLMES**

**BERNSTEIN** deny each and every allegation contained in Paragraphs “5” and “6” of the Plaintiffs’ Complaint and respectfully refers all questions of law to the determination of the Trial Court.

**FACTUAL BACKGROUND**

FOURTH: Defendants **LEONARD BERNSTEIN and JANE HOLMES**

**BERNSTEIN** deny each and every allegation contained in Paragraph “7” of the plaintiffs’ Complaint.

FIFTH: Defendants **LEONARD BERNSTEIN and JANE HOLMES**

**BERNSTEIN** admit each and every allegation contained in Paragraph “8”, of the plaintiffs’ Complaint.

SIXTH: Defendants **LEONARD BERNSTEIN and JANE HOLMES**

**BERNSTEIN** deny each and every allegation contained in Paragraphs “9”, “10”, “11”, “14”, “15”, “16”, “17”, “18”, “19”, “20” and “22” of the plaintiffs’ Complaint.

SEVENTH: Defendants **LEONARD BERNSTEIN and JANE HOLMES BERNSTEIN** admit each and every allegation contained in Paragraphs “12”, “13” and “21” of the plaintiffs’ Complaint.

**FIRST CAUSE OF ACTION**

EIGHTH: In response to Paragraph “23” of the plaintiffs’ Complaint, defendants repeat, reiterate and reallege each and every assertion and denial contained in Paragraphs “FIRST” through “SEVENTH” hereinabove as though more fully set forth at length herein.

NINTH: Defendants **LEONARD BERNSTEIN and JANE HOLMES BERNSTEIN** deny each and every allegation contained in Paragraphs “24”, “25” and “26” of the plaintiffs’ Complaint.

**SECOND CAUSE OF ACTION**

TENTH: In response to Paragraph “27” of the plaintiffs’ Complaint, defendants repeat, reiterate and reallege each and every assertion and denial contained in Paragraphs “FIRST” through “NINTH” hereinabove as though more fully set forth at length herein.

ELEVENTH: Defendants **LEONARD BERNSTEIN and JANE HOLMES BERNSTEIN** deny each and every allegation contained in Paragraphs “28”, “29”, “30”, and “31” of the plaintiffs’ Complaint.

TWELFTH: Defendants **LEONARD BERNSTEIN and JANE HOLMES BERNSTEIN** admit each and every allegation contained in Paragraph "32" of the plaintiffs' Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

THIRTEENTH: This Court lacks subject matter jurisdiction.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

FOURTEENTH: The Complaint fails to state a cause of action recognized at law.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

FIFTEENTH: Plaintiff's claims are barred by waiver estoppel and unclean hands.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

SIXTEENTH: Plaintiff was engaged in conduct that constitutes waiver of their rights under any agreement or contract that may exist.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

SEVENTEENTH: Plaintiff's claims are barred by the applicable statute of frauds.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

EIGHTEENTH: Plaintiff breached its duty of good faith and fair dealing.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

NINETEENTH: Plaintiff breached any agreement that may exist.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

TWENTIETH: Plaintiff has no legally viable breach of contract claim.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

TWENTY-FIRST: Defendants actions were performed in the exercise of absolute right, proper and/or justified.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

TWENTY-SECOND: Plaintiff's claims are barred as a result of a failure of consideration.

**AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE**

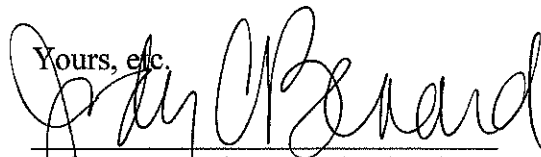
TWENTY-THIRD: To the extent the damages set forth in plaintiff's Complaint could have been wholly or in part avoided by reasonable effort of the plaintiff, its agents servants and/or employers and without undue burden, risk or expense, said damages were the result of plaintiff's failure to mitigate and may not be recovered from defendants LEONARD BERNSTEIN and JANE HOLMES BERNSTEIN.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

TWENTY-FOURTH: The causes of action are barred by reason of the expiration of the applicable Statute of Limitations.

**WHEREFORE**, defendants demand judgment dismissing the plaintiffs' Verified Complaint, together with the costs and disbursements of this action.

Dated: New York, New York  
November 15, 2007

Yours, etc.  


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